

rules. Although the Commission cannot referee disputes between an association and its members, it has disciplined its licensees for failing to deliver the *Subdivision Street Disclosure Statement*, selling lots in unapproved subdivisions, misrepresenting material facts in a transaction, mishandling funds, and other violations of the Real Estate License Law. The Consumer Protection Division of the North Carolina Attorney General's Office also has power to act against legal entities engaged in certain unlawful practices [Phone: 919/716-6000].

Property Restrictions

Q: Can property restrictions dictate the style of my home or the colors I choose for its exterior?
A: Yes, if the restrictions are properly drawn and consistently enforced.

Q: Can the developer, through restrictive covenants or sales contracts, control my choice of builder or real estate agent?
A: Not in most cases. However, a developer may lawfully refuse to sell directly to you and instead require you to purchase a lot and home from a particular builder. As to real estate agents, a developer may include the agent's commission in the home's purchase price.



Q: Don't my constitutional rights to freedom of speech, freedom of religion and the enjoyment of my property prevail over the restrictive covenants or the powers of the association?
A: Not in all cases. If you choose to purchase a restricted property, you agree to abide by the restrictions. Display of signs, flags or banners, certain uses of the property, storage of personal property (e.g., boats, RV's, etc.), keeping of animals, and other practices can lawfully be controlled by restrictive covenants if they are properly created and enforced.

Q: What if a purchaser doesn't want to follow the restrictive covenants affecting the property?
A: A purchaser who does not abide by the restrictions on the property can be fined. That fine can become a lien on the property and collected by sale of the property through foreclosure. If the association is subject to the Planned Community Act, it may impose a fine up to \$100.00 per day, after giving written notice to the owner of the alleged violation and providing an opportunity to defend against the charge at a hearing.

Q: What can I as an owner do if the association is not performing its duties or if other owners violate restrictive covenants or bylaws?
A: Your remedy is to sue the association and/or the offending property owners in court for an order compelling them to abide by all lawful covenants and bylaws. But remember, these are private rights of action that you must assert on your own. No state agency, other than the court system, can determine or enforce an owner's rights.

Q: Who pays my legal expenses if I am sued by my association?

A: With only rare exceptions, you will be responsible for your own attorney fees and other legal expenses.

Roads and Common Areas

Q: Who owns the roads in a residential subdivision or planned community?
A: Unless the roads have been dedicated to public use and formally accepted by the appropriate government agency, neither the state nor any public agency owns legal title to the land over which a street runs. Where the developer has retained title to the streets (i.e., the lot lines border the edge of the street), it is liable under state law for erosion control and possibly civil damages if injuries result from a lack of maintenance. This is true even after all lots have been sold.

Q: Who is responsible for road maintenance in a subdivision or planned community?
A: Until responsibility for road maintenance is lawfully transferred to a municipality or the North Carolina Department of Transportation, either the developer or the owners will be responsible. However, if the roads are private or the developer becomes insolvent, is dissolved or dies, the owners alone will have to bear the cost unless a government agency takes control. *Since there is no guarantee that any government agency will ever take control of the roads in a subdivision, owners are ultimately called upon to bear the cost of road maintenance in many situations.*

Q: Before I buy, will I know who is responsible for the road maintenance?
A: Not necessarily. Since October 1, 1975,

developers and sellers of certain residential subdivision lots have been required by law to give the first purchaser of each property a *Subdivision Street Disclosure Statement* containing important information about road ownership and maintenance responsibility. However, the application of this law is quite limited, so it is very important that you inquire into the status of roads in the subdivision and find out who is responsible for their maintenance.

Q: How do I know which "common areas" of a subdivision or planned community are reserved for the use of all owners?
A: They will be specified by the developer in the recorded map or plat of the property. Even if the developer retains title to the common areas or conveys them to some other person or entity, these areas (trail systems, recreation areas, lakes, roads, etc.) cannot be used for any other purpose, and all of the owners in the subdivision may use the property for the specified purpose.

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Questions and Answers on:
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